U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33960157

Date: NOV. 26, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a producer, seeks classification as an individual of extraordinary ability in business. Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner meets the classification's initial evidentiary requirements. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner

to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

In her initial filing, the Petitioner claimed to qualify under four of the initial evidentiary criteria: receipt of lesser nationally or internationally recognized awards, published material about her in professional publications or major media, leading or critical role for establishments with distinguished reputations, and commanding a high salary or other remuneration. 8 C.F.R. § 204.5(h)(3)(ii)-(iii), (viii)-(ix). The Director concluded that the Petitioner met the publications and leading role criteria, which the record supports. Since the Petitioner had only met two of the initial evidentiary criteria, rather than the required three, the Director denied the petition.

On appeal, the Petitioner provides a brief regarding her qualifications for the awards and salary criteria, and resubmits various evidence from her underlying petition. Upon review, the record demonstrates that the Petitioner commanded a high salary in comparison to others in her field, as required for the criterion at 8 C.F.R. § 204.5(h)(3)(ix). As noted by the appellate brief, the denial stated that the Petitioner's annual salary in 2022 was RMB 545,435, but the income tax records provided in the initial filing indicate that this amount reflects how much income tax the Petitioner paid. Her remuneration in 2022 actually totaled RMB 1,958,142, well above the wage ranges given for others in her field. Therefore, the Petitioner qualifies under the criterion at 8 C.F.R. § 204.5(h)(3)(ix).[1]

The Petitioner has provided documentation that meets three of the initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has therefore overcome the basis of the Director's denial. We will therefore remand this matter so that the Director can conduct a final merits determination according to the *Kazarian* framework.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

[1] Since the Petitioner has met the initial evidentiary requirements under 8 C.F.R. § 204.5(h)(3), we need not reach, and therefore reserve, the issue of whether the [redacted] award qualifies as a lesser nationally recognized award under 8 C.F.R. § 204.5(h)(3)(i). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *c.f. Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where the applicant did not otherwise meet their burden of proof).